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Situation of human rights in Myanmar**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, in accordance with paragraph 6 of General Assembly resolution 63/245.

* A/64/150.

** The present report was submitted after the deadline so as to include the most recent developments.

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Report of the Special Rapporteur on the situation of human rights in Myanmar

Summary

The present report is submitted pursuant to General Assembly resolution 63/245 and Human Rights Council resolution 10/27. It should be read in conjunction with the report of the Special Rapporteur to the Human Rights Council at its tenth session (A/HRC/10/19), since it focuses mainly on the human rights developments in Myanmar since that report.

The trial of Aung San Suu Kyi was the most significant event of the period under review. The additional 18-month house arrest bars her from actively participating in the 2010 elections. The Special Rapporteur considers that the continuation of her house arrest is a blow to the Government's seven-step road map to democracy and regrets that the Government of Myanmar missed another opportunity to prove its commitment to hold inclusive, free and fair elections.

The report concentrates on human rights protection issues. In particular, it highlights the situation of prisoners of conscience, their right to a fair trial and due process of law and conditions of their detention; as well as freedom of expression, assembly and association in the context of the upcoming elections in 2010. It continues with a review of internal conflicts, the protection of civilians, discrimination and the need for humanitarian assistance.

The Special Rapporteur reiterates his recommendation of four core human rights elements: a review of national legislation in accordance with the new Constitution and international obligations; the progressive release of prisoners of conscience; the reform of the armed forces to ensure respect for international human rights and humanitarian law, including training; and the establishment of an independent and impartial judiciary. Since Myanmar is party only to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, the Special Rapporteur strongly recommends that it accede to the other core international human rights instruments.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 63/245 and Human Rights Council resolution 10/27. It should be read in conjunction with the report of the Special Rapporteur to the Human Rights Council at its tenth session (A/HRC/10/19), since it focuses mainly on the human rights developments in Myanmar since that report.

2. During the period under review, the Special Rapporteur travelled to Myanmar from 14 to 19 February 2009 and visited Kayin State. The details of the mission were reflected in the report to the Human Rights Council (ibid.). The Special Rapporteur had the intention to travel for the third time to Myanmar prior to the finalization of the present report. He proposed to the Government to arrive on 5 July and leave on 13 July 2009. The Government of Myanmar responded that it agreed in principle to the visit, but that the dates were not convenient owing to a prior engagement. Subsequent to the Secretary-General's visit to Myanmar on 3 and 4 July 2009 and in the spirit of cooperation, the Special Rapporteur reiterated his request for a visit in the first week of August. The Government of Myanmar replied that the proposed timing was not convenient and that mutually convenient dates could be fixed before the end of 2009. Thus, the present report is based on information received since the last visit of the Special Rapporteur to Myanmar in February 2009. He intends to travel to Myanmar in November/December, before finalizing his report to the Human Rights Council.

3. The report focuses on the major human rights challenges before the national elections in 2010, outlines the humanitarian situation in the various states and contains a call for urgent assistance in providing the basics, including food, to populations in need.

4. In discharging his mandate, the Special Rapporteur is in regular contact with the Secretary-General's Special Adviser on Myanmar, Ibrahim Gambari. The Special Rapporteur would like to thank the Office of the United Nations High Commissioner for Human Rights for all assistance provided to him by the Headquarters, New York Office, and the South-East Asia Regional Office.

II. Methodology and activities of the Special Rapporteur

5. While the Special Rapporteur announced in his reports to the Human Rights Council (A/HRC/7/24, A/HRC/10/19) and to the General Assembly (A/63/341) that his primary task was to cooperate with the Government in the realization of the human rights of the people of Myanmar, he also stated that if after some time, there was no sign of any result in the horizon, he might consider changing strategy. In this respect, he has recommended four core human rights elements to be completed before the elections in 2010. However, since he was not invited by the Government to travel to Myanmar in July/August, he could not discuss the status of implementation of these core human rights elements with the relevant authorities and has not received any reports from the Government on their implementation status.

6. During his visit in February 2009, the Special Rapporteur visited the Kayin State. His findings were included in his report to the Human Rights Council (A/HRC/10/19).

7. On 14 May 2009, the Special Rapporteur issued a press release expressing serious concern over the unlawful detention of Aung San Suu Kyi and her transfer to Insein prison, and called for her unconditional release. On 16 June, the Special Rapporteur together with four other special procedure mechanisms: the Working Group on Arbitrary Detention, the Special Rapporteurs on independence of judges and lawyers; on freedom of opinion and expression; and on human rights defenders, issued another press release urging a fair and open trial for Aung San Suu Kyi. On 11 August, together with those four special procedure mechanisms, he issued a press release deploring the conviction of Aung San Suu Kyi.

III. Human rights issues

8. Myanmar is party to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. As a State Member of the United Nations, Myanmar is also bound by the Universal Declaration of Human Rights and subsequent declarations adopted by the General Assembly.

9. In November 2008, the Committee on the Elimination of Discrimination against Women examined the periodic report of Myanmar. In its concluding observations (CEDAW/C/MMR/CO/3), the Committee noted that "various provisions in the new Constitution may be incompatible with the Convention", including paragraph 8 of the Constitution which includes a prohibition of discrimination on the basis of sex in the appointment of Government posts or duties, but adds that "nothing in this section shall prevent appointment of men to the positions that are naturally suitable for men only". Further, the Committee called upon the authorities in Myanmar "to formulate organic laws which would make the Constitution fully compatible with the Convention, review all the existing domestic laws that are not in compliance with the Convention and formulate new laws that would ensure the practical application of gender equality".

10. That observation and the Committee's call reinforce the Special Rapporteur's first core human rights element, which recommends that the Government of Myanmar revise domestic laws, which are not in compliance with the new Constitution and/or Myanmar's international human rights obligations.

11. The Committee has requested the Government to provide, within one year, by November 2009, written information on the steps taken to implement the recommendations in paragraphs 29 and 43 of its concluding observations (ibid.), which require, inter alia, "to accelerate women's full and equal participation in public and political life, in particular at high levels of decision-making"; and "to urgently eliminate all forms of violence and discrimination against women in northern Rakhine State".

12. On 20 July 2009, at the forty-second Association of South-east Asian Nations (ASEAN) Ministerial Meeting in Phuket, Thailand, the terms of reference for an ASEAN intergovernmental commission on human rights were endorsed. The Intergovernmental Commission is to be launched during the fifteenth ASEAN Summit in October 2009. The Special Rapporteur welcomes this development at the regional level and hopes that the Intergovernmental Commission will be enabled by the ASEAN Member States to efficiently carry out its primary task of promoting and

protecting human rights and fundamental freedoms of the people of ASEAN countries, including Myanmar.

13. Article 1.6 of the terms of reference for the Intergovernmental Commission states as one of its purposes "to uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, the international human rights instruments to which ASEAN Member States are parties". Article 2.1 (e) defines its principle as "respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice", and article 2.1 (f) names as a principle "upholding the Charter of the United Nations and international law, including international humanitarian law, subscribed to by ASEAN Member States". Part of its mandate is "to obtain information from ASEAN Members States on the promotion and protection of human rights" (art. 4.10).

14. With the launching of the Intergovernmental Commission in October 2009, Myanmar will be bound also at the regional level to respect its international human rights obligations.

15. As the Special Rapporteur has repeatedly mentioned, the situation of human rights in Myanmar remains serious and has unfortunately even worsened in some areas and needs to be addressed in a prompt and efficient manner. In this regard, he has recommended four core human rights elements to the Government to implement before the elections in 2010. During his visit to Myanmar in February 2009, he discussed the implementation of the core elements with the relevant authorities. His interlocutors were all receptive. The Attorney-General mentioned that the existing 380 laws were sent to the Ministries concerned to check compliance with the new Constitution and Myanmar's international obligations. The Chief Justice accepted to engage with the Special Rapporteur on the independence of judges and lawyers. The Minister for Home Affairs said that he would consider the recommendation regarding the progressive release of prisoners of conscience. Human rights training for armed forces and police, as a step towards institutional reform, was also welcomed by the responsible authorities of the two forces.

16. Since the Special Rapporteur did not have the possibility to return to Myanmar, he has not been able to follow up directly with his interlocutors and has not received any progress report on the implementation of these recommendations. However, the request of the Special Rapporteur on the independence of judges and lawyers to visit Myanmar to engage with the Chief Justice was not honoured. To date, only 29 prisoners of conscience were released on 21 February 2009. The Special Rapporteur has received reports that many other prisoners of conscience have been arrested. Also, the situation of civilians in areas of armed conflict has deteriorated.

A. Situation of prisoners of conscience, conditions of detention, the right to fair trial and due process of law

17. The period under review was first marked by the harsh long sentences, ranging from 24 to 104 years, given to more than 400 prisoners of conscience in the last quarter of 2008.

18. The second major development concerned Aung San Suu Kyi, who was expected to be released before the end of May 2009, but instead was transferred to Insein prison on 14 May. She was brought before a special court charging her under article 22 of the State Protection Law, which provides for "any person against whom action is taken, who opposes, resists or disobeys any order passed under this Law shall be liable to imprisonment for a period of up to three years, or a fine of up to five thousand kyats, or to both". The new charges were in connection with the intrusion of an American citizen into the residence where she was detained under house arrest. On the same day, the Special Rapporteur issued a press release in which he stated that "since her (Aung San Suu Kyi's) house is well guarded by security forces, the responsibility for preventing such intrusions, and alerting the authorities, lies with the security forces and not with Aung San Suu Kyi and her aides". He continued "in order to ensure national reconciliation and democratic transition, to which the Myanmar leadership has committed itself, all 2,156 prisoners of conscience currently detained by the authorities should be released before the 2010 elections".

19. In the initial phase of the trial, except at two occasions on 20 and 26 May 2009, when a selected number of diplomats, including the United Nations Resident Coordinator, and journalists were invited to attend the court hearings, Aung San Suu Kyi's trial was conducted behind closed doors. On 16 June 2009, the Special Rapporteur, together with four other special procedure mechanisms, namely the Working Group on Arbitrary Detention, the Special Rapporteurs on the independence of judges and lawyers, on freedom of opinion and expression, and on human rights defenders, issued another press release urging a fair, independent and open trial for Aung San Suu Kyi.

20. Subsequently, a number of diplomats were invited to attend the court hearings on 24, 27 and 31 July 2009.

21. The prosecution was allowed to call 14 witnesses, mainly policemen. Only two of Aung San Suu Kyi's four proposed witnesses were allowed to testify. She was never allowed to meet with her lawyer in private.

22. On 11 August 2009, Aung San Suu Kyi was convicted and, sentenced to three years of imprisonment with hard labour, commuted to 18 months of house arrest. On the same day, the Special Rapporteur and the Working Group on Arbitrary Detention, the Special Rapporteurs on freedom of opinion and expression and on human rights defenders issued another press release stating that "the charges laid against the leader of the National League for Democracy and Nobel Peace Prize laureate were itself in violation of international human rights law. The court was not independent, judicial guarantees were disregarded, and charges under the State Protection Act were unsubstantive". The Special Rapporteur considers that this unfortunate sentence is a blow to the seven-step road map to democracy, and unless the Government overturns this decision and releases Aung San Suu Kyi and all other prisoners of conscience to enable them to participate freely in the elections in 2010, the elections will not be considered free, fair or inclusive.

23. In the past, the Special Rapporteur had called for Aung San Suu Kyi's release from detention, which is in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights. The State Protection Law (1975), under which she was initially charged in 2003, provides for a maximum of five years' detention, and the extension of her house arrest in 2008 was also illegal under the Myanmar law.

24. The Special Rapporteur has received alarming reports on the health conditions of some 136 prisoners who do not receive proper medical treatment or medication. Unfortunately, Salai Hla Moe, suffering from hepatitis and stomach swelling, passed away on 12 May 2009 owing to a lack of adequate medical care in Myingyan prison. He was the 140th prisoner of conscience since 1998 who passed away in prison because of health problems. Htay Lwin, suffering from tuberculosis, passed away in Mandalay prison on 28 December 2008. The authorities must ensure that each death in detention is investigated, accountability is established and the families are informed.

25. Most prisoners of conscience rely on their families for medication and food supplies. More than 600 prisoners have been reported to have been transferred to remote prisons far from their family houses. This makes it more difficult, sometimes impossible, for the families to ensure regular visits. This not only affects the morale of the prisoners and their families, but it also has physical consequences for the prisoners not receiving their regular medication. The Special Rapporteur has received information that even the medicine prescribed by prison doctors is sold to the inmates. Those who do not have the financial capacity to pay for the medicine are of course at risk of never recovering from their health problems.

26. Some 12 prisons in the country are reported to have no prison doctors, and some do not even have a health-care service. The capacity of prison dispensaries or hospitals, wherever they exist, is said to be insufficient compared to the number of detainees. According to information received, Insein prison, with more than 10,000 detainees, has only three medical doctors.

27. The Special Rapporteur has recommended as the second core human rights element, the progressive release of all prisoners of conscience, prioritizing those with health problems.

28. The Special Rapporteur has also received disturbing reports regarding the harsh conditions of detention, including solitary confinement, forced labour, shackling, and ill-treatment of prisoners, in particular during the interrogation phase. In this regard, he has been informed that Sandar, suffering from heart disease and hypertension, is in solitary confinement in Myingyan prison without receiving medical treatment. Min Ko Naing, leader of the 88 Generation Students, is said to be in solitary confinement in Kengtung prison. He is suffering from severe eye problems and is reportedly not receiving any treatment. Hkun Htun Oo, leader of Shan Nationalities League for Democracy, is said to have worsening diabetes and to be suffering from high blood pressure and prostate problems. He is detained in Puta-O prison, where his cell is reportedly so small that he cannot move around. Hla Myo Naung, a leading member of the 88 Generation Students, has lost sight in one eye and is said to be at risk of losing the other eye. He is detained in Mytkyina prison, which reportedly has no doctors. The list of those in need of urgent medical treatment is long. According to reliable reports, some 25 prisoners of conscience are being held in solitary confinement.

29. The Special Rapporteur would like to reiterate to the Myanmar authorities the need to respect the international Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C (XXIV) and 2076 (LXII), covering all aspects of imprisonment and setting minimum acceptable

standards such as medical services, food and water, family visits, and the submission of complaints.[1]

30. As stated in his report to the Human Rights Council (A/HRC/10/19), while visiting the dispensary and talking at random with the inmates at Insein prison in February 2009, the Special Rapporteur discovered a shackled prisoner who had tried to run away from forced labour in a military compound in Kayin State. The prison authorities admitted having some 30 to 40 shackled prisoners in Insein.

31. In some prisons, prison governors run the premises and treat prisoners as they wish, with no respect for existing rules and regulations. Urgent attention from higher authorities is required to ensure effective oversight and accountability.

32. Corresponding with family and friends and receiving visits are allowed under international standards. Prisoners should have the right to communicate freely and in full confidentiality with their visitors. There have also been reports of relatives being sentenced. Thant Zin Oo, brother of National League for Democracy (NLD) member Thant Zin Myo, who is currently serving a prison term of 19 years, was given a six-month sentence on 15 December 2008 for having read a letter to his brother during a prison visit. The letter, addressed to Senior General Than Shwe, called for safe and proper medical treatment for detainees.

33. The Special Rapporteur has been informed of new arrests and sentences given by special courts. In January 2009, Pho Phyu, a lawyer who had assisted farmers whose land had been forcibly seized by the army, was arrested and charged under the Unlawful Association Act. He was sentenced to a four-year imprisonment by a court in Magway Division. His appeal was rejected in May 2009. On 12 March 2009, six family members of monk leader U Gambira were sentenced each to five years of imprisonment with hard labour by the North Dagon Myothis Court. During March and April 2009, 10 volunteers were sentenced by a special court in Insein to two to six years of prison terms for having provided relief to victims of cyclone Nargis without the prior approval of the Government and for having spoken with the media.

34. Also, a number of lawyers were arrested for contempt of court. The Contempt of Courts Act (1926) does not identify what constitutes contempt of court, leaving it open for any interpretation. Some 11 lawyers are currently imprisoned. Senior lawyers Aung Thein and Khin Maung Shein, who have completed a four-month prison term for contempt of court, had their licences revoked on 15 May, a day after their application was filed to represent Aung San Suu Kyi.

35. In February 2009, the Special Rapporteur met in private in Insein prison with Nyi Nyi Htwe, a lawyer who had defended prisoners of conscience in the Insein special court in September 2008. During the trial, one of his clients had turned his back to the judge and when Nyi Nyi Htwe was asked to call his client to order, he had responded that he was at the court to defend his clients according to their instructions and did not have the authority to tell them how to sit. Consequently, it

[1] See also the Basic Principles for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, and Inhuman or Degrading Treatment or Punishment.

was recorded in the court report that the behaviour of the defendants and their lawyers was irresponsible. Nyi Nyi Htwe's case was sent to higher court. On 30 October 2008, he was sentenced to a six-month imprisonment under section 288 of the Penal Code. He was released on 28 April 2009. However, his law licence has been revoked. His wife is now supporting the family by selling lottery tickets. The Special Rapporteur has received information that the couple's business associates have been harassed and warned by the authorities and therefore are now reluctant to work with Nyi Nyi Htwe's wife.

36. The Special Rapporteur regrets that the independence of lawyers to practise their profession is hindered for political motivation. Moreover, those who abide by integrity and principle are often charged under the Contempt of Courts Act (1926), which does not specify what actually constitutes contempt of court, leaving it open for any interpretation and decision by higher courts. Even after serving the unfair imprisonment, the career of many of these lawyers is destroyed, since their licence is revoked and they cannot find any other job elsewhere.

37. The existence of the prisoners of conscience seriously undermines the independence of the judiciary, despite its guarantee by domestic legislation, including the Judiciary Law (2000) and the Constitution (2008). In most cases, judges operate on conclusions based on instructions from political and higher instances.

38. In terms of procedures, the law requires that the arrestee is brought before a judge within 24 hours. However, people are often detained without charges, sometimes without ever being brought before a judge, and are sometimes released without explanation. Tin Myo Win, Daw Aung San Suu Kyi's doctor, was arrested on 6 May 2009 and released on 16 May without any explanation from the authorities for his detention. Also in April 2009, five members of the Federation of Trade Unions of Burma were arrested and subsequently released without explanation.

39. In accordance with procedural law, the police have the responsibility for law enforcement, including for arrest and detention. However, military intelligence agencies participate in arrests, investigations and interrogations, and hold prisoners in army facilities, as happened on a large scale during the 2007 protests. The Special Rapporteur is concerned about the uncertain role of military intelligence, and the rise of non-formal gangs for security purposes such as Swan Ar Shin. They should not have any role in arresting people, which is against the criminal procedure and principles of due process of law.

40. The Special Rapporteur reiterates that in order to ensure free trials and due process of law, and abstain from the use of torture, the authorities should respect internationally accepted standards and principles in the areas of administration of justice, including the treatment of prisoners, the role of lawyers, the role of prosecutors, the independence of the judiciary, the presumption of innocence and the conduct of law enforcement officials.

41. The Special Rapporteur notes the importance of financial support provided by the International Committee of the Red Cross (ICRC) to families to visit their detained relatives. He invites the authorities to re-engage with the ICRC and allow it to conduct prison visits — which have been suspended since December 2005 — in accordance with its established mandate.

42. The Government is commended for maintaining the moratorium on the use of death penalty, in place since 1998.

43. In September 2008, the Government released 6 prisoners of conscience and 29 others were released in February 2009. The Special Rapporteur of course welcomes these releases, but highlights that compared with the total number of 2,160 prisoners of conscience currently in detention, these releases lack proportionality.

B. Freedom of expression, assembly and association, and the road towards the 2010 elections

44. The freedom of opinion and expression as well as the freedom of assembly and association are fundamental rights enshrined in the Universal Declaration of Human Rights and are guaranteed by international human rights treaties, including those to which Myanmar is a State party, namely the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination against Women and ILO Convention No. 87 on Freedom of Association and Protection of the Rights to Organize. The new Constitution of Myanmar also provides for freedom of expression, opinion and assembly. The Preamble (para. 8) provides for justice, liberty and equality. Article 6 (d) declares that the basic principles of the Union are the flourishing of a genuine, disciplined multi-party democratic system. Article 406 (a) and (b) state that a political party shall have the right to organize freely and to participate and compete in elections. Article 354 states that every citizen shall be at liberty to express and publish freely their convictions and opinions, to assemble peacefully without arms and to form associations and organizations.

45. The General Assembly, in its resolution 63/245, expressed concern at the continuing imposition of severe restrictions on the exercise of fundamental freedoms such as freedom of movement, expression, association and assembly, in particular the lack of an independent judiciary and the use of censorship; and strongly called upon the Government of Myanmar to lift all restraints on the peaceful political activity of all persons by, inter alia, guaranteeing freedom of peaceful assembly and association and freedom of opinion and expression, including for free and independent media, and to ensure unhindered access to media information for the people of Myanmar.

46. In practice, all publications in Myanmar are subject to censorship by the Press Scrutiny and Registration Board of the Ministry of Information. Other censorship boards exercise control in the field of arts and culture. Journalists exercise a high level of self-censorship or otherwise risk seeing their licenses revoked, as has happened to many journals and magazines. The coverage of Aung San Suu Kyi's trial demonstrates the lack of space for the media to function independently and professionally. The official State media transmitted the official line while other journalists were allowed access selectively when the authorities decided so. The Special Rapporteur received information that senior editors and staff of the *True News Journal* in Yangon were summoned by the Press Scrutiny and Registration Board following the distribution of a publication at Insein prison. The Board objected to the headline which appeared in the journal. Restrictions on communications were imposed during the trial, with Internet cafés and telephone lines in the neighbourhood being cut off.

47. It is reported that at present 51 journalists and media professionals are in detention for having exercised freely their profession. Often, prisoners of conscience are convicted on the basis of the Electronic Act and the Television and Video Law. In February 2009, the Special Rapporteur met in private with two prisoners of conscience, Tin Min Htut and Nyi Pu, who were convicted, inter alia, on the basis of the Electronic Act for having written an open letter to the Secretary-General.

48. During his meeting with the Attorney-General in February, the Special Rapporteur was informed that the existing 380 domestic laws were sent to the concerned Ministries for compliance checks with the provisions of the new Constitution and Myanmar's international obligations. The Special Rapporteur welcomes this important undertaking and recommends that priority attention be given to laws and orders which affect the exercise of the freedom of expression and association in view of the preparations for the upcoming elections. Some of the legislation contains broad provisions allowing misuse and arbitrary application. Under these provisions, exercising one's right to freedom of expression and association can risk up to 20 years of imprisonment. The Unlawful Association Act (1908) gives the exclusive power to the President of the Union to declare an association unlawful. Members of unlawful association or those who attend meetings of such associations, or contribute or receive or solicit any contribution for the purpose of such associations or in any way assist the operations of such association can be sentenced to 2 or 3 years of imprisonment.

49. The Electronic Transaction Law provides for up to 15 years of imprisonment for having used electronic transactions detrimental to the security of the State, the prevalence of law and order, community peace and tranquillity, national solidarity, national economy or national culture. Moreover, creating, modifying or altering information or distributing information created, modified or altered by electronic technology which may be detrimental to the interest of or to lower the dignity of any organization or any person is punishable with a maximum of 5 years of imprisonment.

50. The Special Rapporteur hopes that the Emergency Provisions Act (1975), the Television and Video Law (1985), the Motion Picture Law (1996), the Computer Science Development Law (1996) and the Printers and Publishers Registration Act (1962) will also be revised and amended accordingly.

51. To date, the electoral law governing the elections in 2010 has not been made public. It is urgent to ensure proper registration of political parties and to allow for adequate campaigning throughout the country. Free and fair elections also require the undertaking of civic education to ensure informed and educated voters, especially in view of the fact that no elections have been held in the country since 1990. The Committee on the Elimination of Discrimination against Women, in its concluding observations, calls upon the Government of Myanmar "to use the formulation of its new electoral law as an opportunity to include women, in accordance with the provisions on non-discrimination in its Constitution, and to increase women's political participation".

52. The independence of the judiciary and due process of the law are recognized in chapter I of the Constitution, entitled "Basic Principles of the Union". However, the overly dominant role given to the military throughout the Constitution without

effective counter-balancing and control mechanisms poses serious challenges for the protection of human rights.

53. In addition, the enjoyment of human rights could be compromised by several exception clauses contained in the new Constitution which are formulated in broad and vague terms and which allow easily found justifications. The security of the Union or prevalence of law and order, community peace and tranquility or public order and morality are frequently used as justifications for restricting rights, as in article 354 concerning the rights to freedom of opinion, expression, assembly and association as well as rights to culture and religion, and in article 376 concerning detention.

54. Under international human rights law, some fundamental rights are non-derogable and the derogation of certain rights in case of declared emergencies is clearly defined. In addition, the Special Rapporteur wishes to reiterate the principles he has outlined with regard to restrictions on the enjoyment of human rights. They shall (a) be defined by law; (b) be imposed for one or more specific legitimate purposes; and (c) be necessary for one or more of these purposes in a democratic society, including proportionality. Any limitation that does not follow these requirements and jeopardizes the essence of the right with vague, broad and/or sweeping formulas, would contravene the principles of legality and international human rights law.

55. The Constitution contains one article in chapter XIV on "Transitory Provisions" which could be seen as an open invitation for impunity and requires clarification. Article 445 states that "no proceeding shall be instituted against the said Councils (State Law and Order Restoration Council, State Peace and Development Council) or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties". This provides for blank immunity for State agents, contrary to the very essence of accountability for human rights violations.

C. International humanitarian law and protection of civilians from discrimination

56. The General Assembly, in paragraph 2 (d) of its resolution 63/245, expressed concern at the continuing discrimination and violations suffered by persons belonging to ethnic nationalities of Myanmar, and attacks by military forces and non-State armed groups on villages in Kayin State and other ethnic States in Myanmar, leading to extensive forced displacements and serious violations and other abuses of the human rights of the affected populations.

57. Myanmar has seen a large scale of population displacement of civilians, especially from the ethnic nationalities along the border areas. Owing to the ongoing fighting between the Government and Karen National Union (KNU), some 500,000 people are estimated to have been forced to leave their villages in Eastern Myanmar, while many others have fled to other countries in the region, sometimes under life-threatening conditions.

58. In the first week of June 2009, with the escalation of fighting between the Myanmar army/Democratic Karen Buddhist Army (DKBA) and the Karen National Union/Karen National Liberation Army (KNU/KNLA), some 3,500 people, mainly

women and children, were reported to have left the area of Ler Per Her internally displaced persons camp in Dta Greh Township, Pa'an District in Kayin State, to seek refuge in Thailand. These people had previously fled their villages and were living in temporary camps near the border with Thailand. It is reported that DKBA is exercising tough measures in areas vacated by KNLA units as imposing various forms of extortions of food and belongings and arbitrary taxations on civilians and enforcing forced and hazardous labour without compensation.

59. According to reports, villages are attacked on the suspicion that the inhabitants are sympathizers of KNU. Soldiers break into houses and steal food stores, burn down houses and often take the men away for forced labour as porters, and those who resist are shot dead. It is also reported that during the day when villagers are at their paddy fields, soldiers arrive and plant anti-personnel landmines around the village, which creates a risk and fear for the villagers to return home. Therefore, they have to seek refuge and hide in the jungle. It was reported recently that a power struggle between the military and an armed rebel group in Mon State resulted in the execution of four village leaders in two separate incidents on 2 and 3 April 2009.

60. It is reported that on 15 July 2009, the Shan State Army-South (SSA-S) attacked the 515th Light Infantry Battalion in Laikha, killing 11 soldiers from the Myanmar army. It is said that as retaliation and part of military operations against the insurgent armed group between 27 July and 1 August 2009, the Myanmar army deployed seven battalions to evacuate civilians from 39 villages in Laikha township and parts of Mong Kerng township in Central Shan State, resulting in the displacement of more than 10,000 people and burning down of more than 500 houses.

61. Anti-personnel landmines are frequently used by both sides to restrict the movement of populations or of troops. Captured civilians are said to be used as mine sweepers or as porters for the army in mined areas. It should be noted that risking civilians' lives as sweepers in landmined areas is not a Government policy, but a practice adopted by a number of battalions, depending mainly on the commanders. The number of casualties among civilians caused by the explosion of mines is high. Very often, children playing in the forest have also been said to be victims of such explosions. It is estimated that the casualties over the past five years have increased. In addition to Kayin State, landmine casualties have been reported in Kayah, Rakhine and Shan States.

62. The Special Rapporteur reiterates his call on both the Government and non-State actors to stop definitively the use of landmines. He urges the authorities to accede to the Mine Ban Treaty. In this connection, he encourages the international community to provide the necessary assistance to the Government for an effective landmine clearance and also provision of adequate support to the victims.

63. In February 2009, the Special Rapporteur found at random in Insein and Hpa-An prisons two inmates who had been forced to be porters for the army in Kayin State. Owing to the harsh forced labour conditions, they had tried to flee and were caught and put in jail. In this regard, the Special Rapporteur reiterates the need for the Government to fully implement Legislative Order No. 1/1999 on the Eradication of Forced Labour.

64. Another disturbing issue that continues to persist despite the Government's efforts for its eradication is the recruitment of children under the age of 18 as

soldiers. According to reliable reports, children are recruited as soldiers by both the army and non-State actors. Street children and rural school students are the most affected and targeted. There is information that in January 2009 three boys of about 13 years of age in Paletwa town in Chin State were forcibly recruited by the Lisin Army camp of Infantry Battalion 304. It is said that children who refuse to join the military are threatened and harassed.

65. In February 2007, the Government signed the Supplementary Understanding with the International Labour Organization (ILO) to establish a complaint mechanism on forced labour and the recruitment of child soldiers. Thanks to this mechanism, over 28 children have been rescued. However, officers who had recruited the children were never prosecuted, which can be interpreted as a sign of tolerance by the authorities of such practice at the commanders' and officers' level.

66. Since the ILO-established mechanism is complaint-based, its mandate is limited to addressing cases brought to its attention and does not include authority for fact-finding to look for and investigate cases of child soldiers or other forced labour. In some cases, people who lodged complaints with ILO have been victims of serious reprisal, such as Thet Wei, who was sentenced on 16 September 2008 to a two-year imprisonment with hard labour.

67. On 27 April 2009, ILO conducted a forced labour awareness-raising programme in Hpa-An, Kayin State. The participants included officials from the Kayin State and representatives from the ceasefire groups. Another session with more than 136 participants was conducted in Shan State on 7 May 2009.

68. The Special Rapporteur urges the Government to accede to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It encourages the international community to provide assistance to the authorities in Myanmar to ensure adequate means for physical and psychological adaptation and reintegration of former child soldiers in the society as civilians.

69. The Special Rapporteur has also received cases of allegations of rape and sexual assault by military personnel. As with all allegations of serious human rights violations, proper investigations must be conducted and justice must be done and seen to be done.

70. Another issue of serious concern that the Special Rapporteur has continuously raised in his reports and oral interventions is the situation of the Muslim population in Northern Rakhine State. According to the Citizenship Law (1982), this population, despite of having lived for generations in Northern Rakhine State, is not recognized as one of the 135 national races in Myanmar. Therefore, it is not granted citizenship and is stateless. However, in order to allow them to participate in the referendum on the new Constitution in May 2008, the Government issued them temporary registration cards, which could not be used to claim citizenship.

71. In his address to the Human Rights Council at its tenth session, the Special Rapporteur noted the issuance of temporary registration cards for the purpose of participation in the referendum on the new Constitution. Legally speaking, only citizens of a State who will be governed by the State Constitution have the right to express their opinion on the adoption of that Constitution. Therefore, the Special Rapporteur highlighted that nothing could be more of a proof of citizenship than to

have the right to participate in the referendum on the adoption of the new Constitution.

72. The problem of statelessness is the root of chronic scourges endured by the Muslim population. Without any identity papers, this population needs to apply for travel permits, which are costly and cannot be obtained by everyone. Being confined to its own villages limits the possibility to have access to health care and education, to find a job, and thus to provide the basics for living in dignity.

73. Based on a local order issued in the late 1990s in Rakhine State, Muslims are required to obtain an authorization from the local authorities to get married. Since obtaining these authorizations is costly and lengthy, often the Muslims bypass the authorization and get married according to their traditions. Even though this local order is not based on any national law, those not respecting it have been prosecuted and sentenced to imprisonment.

74. The Special Rapporteur welcomes the recent judgments by the Supreme Court of Myanmar overturning several decisions of the Rakhine State court that had convicted male Muslims for cohabiting with Muslim women they were not legally married to.

75. The Rakhine State court had charged the male Muslims under section 493 of the Penal Code, which states that "Every man, who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine". According to the Criminal Procedure Code (sect. 198, para. 1), "No Court shall take cognizance of an offence falling under Chapter or Chapter XXI of the Penal Code, or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence". Therefore, the action under section 493 of the Penal Code can only be filled if the complaint is made by the aggrieved person, who, in those cases, is the woman who has been misled. However, according to Criminal Procedure Code (sect. 198, para. 2), "where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of court, make a complaint on his or her behalf". In this respect, the Rakhine State court had, at each time, ruled that since the aggrieved woman was Muslim and, according to her traditions, she could not be compelled to appear before the court, the complaint made by the public officer on her behalf was acceptable and the accused was accordingly charged and sentenced under section 493 of the Penal Code.

76. The Supreme Court overturned these judgments by ruling that the aggrieved women could have appeared before the court. Since the leave of court obtained by the public officer to act on her behalf did not meet the provisions of the Criminal Procedure Code (sect. 198), the procedural requirements for bringing an action under section 493 of the Penal Code were not met, which makes the action void ab initio and impossible to charge and convict the accused. The Special Rapporteur has received information that in a recent case, Rakhine State court has followed the Supreme Court ruling.

77. Since this population does not hold any identity cards, the newborn children are not registered, which poses a question of compliance with article 7 of the Convention on the Rights of the Child, which establishes that "the child shall be registered immediately after birth and shall have the right from birth to a name, [and] the right to acquire a nationality". Those who do obtain marriage authorization are said to be restricted to two confinements.

78. The Committee on the Elimination of Discrimination against Women, in paragraph 43 of its concluding observations, urges the Government

> "to urgently eliminate all forms of violence and discrimination against women in northern Rakhine State, and, in particular, to alleviate the heavy restrictions on the movement of residents within northern Rakhine State, especially women and girls. The Committee further urges the State party to lift the orders concerning marriage authorization and restriction of pregnancy, which violate the human rights of those women. The State party should also take effective measures to improve their access to primary health care and basic education. The State party is encouraged to continue to collaborate with the international community, especially the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Population Fund, in those efforts".

79. The number of cases of allegation of forced labour imposed on the Muslim community has considerably increased in 2009. It is said that since March 2009, the Government is building a barbed-wire fence along its border with Bangladesh. To this end, the Muslim community is required to provide work without compensation to excavate earth, raise an embankment, manufacture concrete pillars, and transport the pillars in its fishing boats to the various sections of the embankment. It is said that army forces enter people's houses in the middle of the night to collect them for the forced labour, and those who refused have been beaten.

80. In addition to the construction of the barbed-wire fence, the Muslims of Northern Rakhine State provide compulsory forced labour for the military in camp maintenance, sentry duty, portering and brick baking.

81. The Special Rapporteur has also received reliable information regarding the closure of churches in Chin State hindering the Christians from practicing their religion, and calls upon the Government to ensure that ethnic minorities are granted fundamental rights, as enshrined in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities and article 30 of the Convention on the Rights of the Child. In the light of the seven-step road map to democracy and the new Constitution, especially article 34 (freedom of religion), article 347 (equal rights before the law of any person), article 348 (no discrimination based on race, birth, religion, official position, status, culture, sex and wealth), he urges the Government to implement his first core human rights element by amending domestic laws to ensure the full enjoyment of human rights without discrimination for all people in Myanmar.

82. The Special Rapporteur urges the Government to take prompt measures to establish accountability and responsibility with regard to the widespread and systematic human rights violations reported in Myanmar. This will stop abuses, and demonstrate that serious human rights violations are not the Government's policy or a widespread practice tolerated or condoned by the Government. Non-governmental

organizations have advocated for more action from the United Nations, particularly through the establishment of a group of experts to investigate serious violations of human rights and international humanitarian law committed by all parties in internal conflicts.

D. Living conditions, sustenance and humanitarian assistance

83. The enjoyment of economic, social and cultural rights is seriously impeded by the social, economic and development conditions in the country, affecting the most vulnerable populations, including those in the remote states and those recovering from cyclone Nargis. These conditions are the result of the Government's mismanaged policies, which are further exacerbated by the impact of the global economic crisis, food insecurity, and climate change.

84. Concerted efforts and a series of measures are necessary to improve people's living conditions, in particular for the most vulnerable among them. Myanmar is privileged with rich natural resources. Reduction in the high military expenditure and an increase in the currently low budget for public services will contribute to making available affordable and accessible heath care, education, and social security coverage for the people.

85. The support from the international community, especially in addressing the urgent needs of the post-Nargis period, has been valuable and should continue. Myanmar is ranked as one of the least developed countries and receives one of the lowest levels of development aid. The drastic contrast between the worrying social, economic and development indicators and the very low level of development assistance to Myanmar needs to be addressed by the international donor community.

86. In the areas affected by cyclone Nargis, it is estimated that some 130,000 families remain without adequate homes. Shelters are in many cases of poor quality and provide limited protection from the heat and rain and are often overcrowded. Other key challenges include increased unemployment, the deep debt trap and scarcity of clean water. An estimated 240,000 people in the south-western region of the delta do not have access to fresh drinking water.

87. Some 20 volunteers, including Zarganar and Htet Htway, who were involved in the initial relief efforts, are still in prison. Two journalists, Ma Eint Khaing Oo and Kyaw Kyaw Thant, were arrested and sentenced for having volunteered to help a group of cyclone victims to visit an international organization's office for assistance after the cyclone. It is reported that more than 200 requests of visas for aid workers are pending.

88. The Special Rapporteur stresses the need for a human rights-based approach to humanitarian and development assistance and calls for deliberate efforts to engage the affected communities in this endeavour. The participation of the communities concerned in the formulation and implementation of development plans and decisions impacting their lives is essential in ensuring the effectiveness of assistance provided. The Special Rapporteur notes that through the Integrated Community-based Early Recovery Framework, the United Nations Development Programme provides a community-driven recovery strategy and structure to support the cyclone-affected communities.

89. It is reported that although Myanmar exports rice, food scarcity is an acute problem in Northern Rakhine State, Kayin State, North and East Shan State, Chin State and some areas of the cyclone-affected areas. It is estimated that 70-90 per cent of family income is allocated to purchase basic daily food, namely rice. According to reliable sources, nearly 5 million people are in need of food aid.

90. The food crisis is exacerbated by the restrictions imposed by the authorities on farmers to plant and harvest and also by arbitrary land confiscation for the purpose of growing cash crops such as tea and biofuels. Moreover, farmers were forced to purchase tea and jathroba seeds under the threat of their land being confiscated. Also, it is reported that in many areas food aid has been redirected by members of the military.

91. It is reported that in Chin State, school dropouts have doubled in the last two years since families cannot afford to send their children to school. Children are obliged to work to help their families to earn more money to afford buying basic food, namely rice.

92. On 4 June 2009, a landslide caused by heavy rains washed away a jade miners' settlement along the Uru River in Hpakant Township, northern Kachin State. Significant flooding also occurred in Hpakant town, after a water reservoir burst owing to the heavy rains. Another jade mining city, Seng Tawng and its surrounding villages, were reported to have been affected by the floods. Reports from aid agencies indicated that a total of 1,351 people were housed in informal displacement locations. Clean drinking water and sanitation continue to be a priority for the affected population, as well as access to food and adequate nutrition.

93. Northern Rakhine State is faced with the problem of shortage of employment and income-generating activities. It is reported that 68 per cent of the Muslim population does not have access to land and the source of income is mainly daily labouring jobs, which are insecure and not always available. During the rainy season, it is more difficult to find a job.

E. Developing cooperation in the context of human rights

94. The Special Rapporteur welcomes the Government's commitment expressed at the Human Rights Council to cooperate with the international community, including with the Special Rapporteur and the Human Rights Council, as the cornerstone of its foreign policy.

95. The Special Rapporteur welcomes the working relationship established between the United Nations country team and the Government human rights body. He also welcomes the one-year extension of the Supplementary Understanding between the Government and ILO signed on 26 February 2009. ILO operates, in agreement with the Government of Myanmar, a forced labour complaints mechanism, which includes complaints of underage recruitment into the military and the inappropriate use of prison labour. The Special Rapporteur encourages the Government of Myanmar and ILO to strengthen its application, particularly with regard to ensuring that all citizens are aware of the law, of the existence of the complaints mechanism and of their associated rights. It is critical that people exercising their right to complain can do so without fear of recrimination or reprisal. He also recommends that the Government review its policy regarding forced labour

used by the military and prison labour. He requests ILO to provide all technical assistance needed in this regard.

96. The Special Rapporteur also welcomes the extension of the presence of UNHCR in Northern Rakhine State, which was agreed by both parties during the visit of the High Commissioner for Refugees to Northern Rakhine State in March 2009.

97. The Special Rapporteur commends the signing of a bilateral agreement between Myanmar and Thailand on 24 April 2009 to combat human trafficking, especially of women and children, covering areas such as prevention, protection, recovery and reintegration of victims, law enforcement and criminal justice, as well as developing and implementing joint actions between the two countries. He welcomes the endorsement of the terms of reference for an ASEAN intergovernmental commission on human rights on 20 July 2009. He is hoping that the Intergovernmental Commission will be enabled by member States to efficiently carry out its primary task of promoting and protecting human rights and fundamental freedoms of the people of ASEAN countries, including Myanmar.

98. The Special Rapporteur has also highlighted the existing challenges regarding the economic, social and cultural rights and, in this respect, calls upon the international community to provide necessary resources to the United Nations and financial institutions to assist the Government of Myanmar in improving the living standard of the people of Myanmar, notably those residing outside the urban agglomerations such as the capital and Yangon.

99. The Special Rapporteur promotes the expansion of the mandate of the Tripartite Core Group to include all States requiring humanitarian assistance.

IV. Conclusions

100. **The Special Rapporteur regrets that his request to visit Myanmar was not accepted by the Government of Myanmar. He is hoping to travel back to Myanmar before the end of 2009.**

101. **Since the Special Rapporteur did not have the opportunity to discuss the progress of the implementation of the four core human rights elements, which he recommended to the Government after his first visit to Myanmar in August 2009, he reiterates them and reminds the Government that these four elements are part of its international human rights obligations, and are absolutely necessary to be completed in order for the seven-step road map to democracy to be credible and founded on internationally recognized democratic values, to which Myanmar has adhered as a State Member of the United Nations.**

102. **The Special Rapporteur remains committed to cooperation with the Government of Myanmar to assist it in improving the human rights situation of the people in the country, including the Muslims in Northern Rakhine State. However, cooperation by definition requires the other party's commitment to the joint venture. Therefore, unless the Government gives clear signals and proofs that it is seriously pursuing the ultimate goal of promoting and protecting the human rights of all people on its territory, the Special Rapporteur may doubt the Government's willingness to cooperate in this joint**

venture in realizing the political and civil as well as economic, social and cultural rights of the people.

V. Recommendations

103. In his report submitted to the General Assembly (A/63/341), the Special Rapporteur recommended that the Government implement the four core human rights elements before the elections in 2010. During the Special Rapporteur's mission to Myanmar in February 2009, the Government expressed its readiness to implement the four core elements, but their effective implementation and completion has yet to be seen. Therefore, the four core human rights elements are again included as recommendations, taking into account the developments witnessed during the mission.

104. The Special Rapporteur recommends that the Government of Myanmar:

(a) Sign and ratify the remaining core international human rights instruments;

(b) Expand the mandate of the Tripartite Core Group to include all other regions in Myanmar in need of humanitarian aid;

(c) To take prompt measures to establish accountability for the widespread and systematic human rights violations and combat the prevailing impunity enjoyed by the perpetrators;

(d) Complete the four core human rights elements indicated below before the elections in 2010.

Four core human rights elements to be implemented before the 2010 elections

1. First core human rights element: review of national legislation in accordance with the new Constitution and international obligations

105. The Special Rapporteur has recommended that the Government of Myanmar start reviewing and amending domestic laws that limit fundamental rights and contravene the new Constitution and international human rights standards. Myanmar, as a State Member of the United Nations that signed the Charter of the United Nations soon after the country gained independence in 1948, must honour its international human rights obligations, and cannot invoke provisions of its domestic law as justification for its failure to comply with them (article 27 of the Vienna Convention).

106. Any domestic law that limits the enjoyment of human rights should (a) be defined by law; (b) be imposed for one or more specific legitimate purposes; and (c) be necessary for one or more of these purposes in a democratic society, including proportionality. Any limitation that does not follow these requirements and jeopardizes the essence of the right with vague, broad and/or sweeping formulae would contravene the principle of legality and international human rights law.

107. The Special Rapporteur has identified a number of legal provisions that do not fulfil the above-mentioned requirements, and recommended that the Government start a process of review and, at the same time, stop arrests and convictions under those legal provisions, namely, the State Protection Act (1975); the Emergency Provisions Act (1950); the Printers and Publishers Registration Act (1962); the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Opposition (No. 5) (1996); the Law Relating to the Forming of Organizations (1988); the Television and Video Law (1985); the Motion Picture Law (1996); the Computer Science Development Law (1996); the Unlawful Association Law; the Electronic Communication Law; and sections 143, 145, 152, 505, 505 (b) and 295 (A) of the Penal Code.

2. Second core human rights element: progressive release of prisoners of conscience

108. At present, there are more than 2,160 prisoners of conscience detained in Myanmar. A prisoner of conscience is a person who (a) is charged with or has been convicted for the infringement of national legislation, which impedes enjoyment of freedom of expression, opinion, peaceful assembly, association or any other human right; and (b) does not have access to a court, or is being tried by courts that lack independence and impartiality, and/or due process of law is denied. These two circumstances are against the basic human rights recognized in the new Constitution and the Universal Declaration of Human Rights. Therefore, prisoners of conscience are basically individuals whose human rights are systematically denied.

109. Given the fact that fundamental rights such as liberty and personal integrity are being affected in detention, the release of prisoners of conscience, even progressive, should start as soon as possible. Release must be without any conditions that may result in new ways of diminishing the enjoyment of human rights, such as written statements renouncing the right to political participation or campaign. On the other hand, parallel to release, immediate measures should be taken to avoid any cruel treatment, improve conditions of detention and ensure urgent medical treatment.

110. The Special Rapporteur recommends that prisoners be released in the following order of priority:

(a) Elderly prisoners;

(b) Prisoners with health problems;

(c) Prominent members of political organizations and ethnic leaders;

(d) Long-standing prisoners;

(e) Members of religious orders;

(f) Women who have children;

(g) Prisoners transferred to forced labour camps;

(h) Prisoners not convicted;

(i) Prisoners without criminal records;

(j) Prisoners held in jails remote from their homes.

3. Third core human rights element: armed forces

111. The Special Rapporteur recommends that a number of measures be adopted by the military and the police in order to improve the human rights situation in the country. In this regard, the military should:

(a) Repeal discriminatory legislation and avoid discriminatory practices, particularly in Northern Rakhine State, where a large part of the Muslim community has been deprived of citizenship, movement and other fundamental rights for many years;

(b) Refrain from the recruitment of child soldiers, and continue its policy to avoid such a practice;

(c) Forbid the use of anti-personnel landmines. In this respect, the Special Rapporteur recommends that the Government ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction. The Government has reportedly justified its failure to ratify the Convention by stating that rebels still use anti-personnel landmines. Violations of international humanitarian law by one party to a conflict is no justification for non-compliance by other parties;

(d) Respect international human rights and humanitarian law in areas affected by internal conflict, particularly in Kayin State. It is prohibited to direct attacks against civilians not participating in the hostilities or to launch indiscriminate attacks against military objectives and civilians or civilian objects. Every precaution must be taken to spare civilians and their property of the effects of the hostilities. Medical and humanitarian staff, hospitals and clinics must be respected. This includes ensuring efficient working of health providers in the conflict areas;

(e) Refrain from the use of forced labour of civilians (portering), particularly in Kayin State. In this regard, the Special Rapporteur recommends that the Government engage with ILO representatives to ensure compliance of prison labour policy with the obligations of Convention No. 29 concerning Forced or Compulsory Labour;

(f) Refrain from detaining individuals for alleged infringement of national laws that are under review according to the first core human rights element, and refrain from the ill treatment of detainees;

(g) Establish a permanent and meaningful training programme on human rights for members of the armed forces, police and prison forces, with international cooperation. In this regard, the Special Rapporteur recommends that technical assistance be requested from the Office of the United Nations High Commissioner for Human Rights.

4. Fourth core human rights element: the judiciary

112. **The Special Rapporteur stresses the lack of independency and impartiality of the judiciary in Myanmar, and recommends that a series of measures be taken. The judiciary has delivered hundreds of harsh sentences against prisoners of conscience, applying national legislation that might be contradictory to human rights standards, with disregard for judicial guarantees. The independence and impartiality of the judiciary remains an outstanding issue in Myanmar. Members of the Supreme Court are appointed by the Head of State, due process of law is not fully respected, and the right to appeal, if granted, is handled by judges with similar constraints and lack of independence. Consequently, the Special Rapporteur reiterates his recommendations that the judiciary:**

(a) Exercise full independence and impartiality, particularly in cases of prisoners of conscience;

(b) Guarantee due process of law, including public hearings, in trials against prisoners of conscience;

(c) Refrain from charging and convicting individuals for alleged infringement of national laws that are under revision, in compliance with the first core human rights element. The Special Rapporteur urges the judiciary to refrain from conducting trials against prisoners of conscience if independence is not assured, due process of law is not guaranteed and national law is not properly amended;

(d) Establish effective judicial mechanisms to investigate human rights abuses in order to fight impunity;

(e) Seek international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles. In this respect, the Chief Justice accepted the recommendation to engage with the Special Rapporteur on the independence of judges and lawyers, a decision that has to be pursued.